



Public Notice

**U S Army Corps
of Engineers**
Huntington District

In reply refer to Public Notice No.

200500467

Issuance Date:

July 11, 2005

Stream:

Mill Creek

Closing Date:

August 10, 2005

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act (CWA). This notice also serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Wal-Mart Stores, Inc.
2001 Southeast 10th Street
Bentonville, Arkansas 72716

LOCATION: The project site is located on Miller Road approximately 2 miles north of its intersection with WV Route 33 in Ripley, at approximately Latitude 38° 49' 30.61 Longitude 81° 42' 22.10 in Jackson County, West Virginia. The limits of the project site are depicted on the **Sheet 1 of 4**.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into waters of the United States (U. S.), in conjunction with the construction of a new Wal-Mart Superstore (**Sheets 2-3 of 4**). As part of this project, the applicant proposes to discharge approximately 55.1 cubic yards of dredged and/or fill material into an approximately 737- linear foot intermittent reach of an unnamed tributary of Mill Creek to construct the proposed store, parking lots and storm water management facilities. A total of nine streams are present on the project site. However, only two of the nine streams are part of the surface tributary system. The remaining streams exhibit an ordinary high water mark for some distance. However, each of these streams disappears and sheet flows into an agricultural field located approximately 900 linear feet from Mill Creek. Therefore, these seven streams are not waters of the U.S. Of the two streams on-site that are waters of the U.S., one stream (approximately 737 linear feet) would be adversely impacted and the other stream (approximately 1,070 linear feet) would be avoided.

MITIGATION PLAN: To compensate for adverse impacts to waters of the U. S. associated with the proposed project, the applicant proposes to perform off-site mitigation work at the Frozen Camp Wildlife Management Area, owned by the West Virginia Department of Natural Resources (WVDNR) **Sheet 4 of 4**. Detailed mitigation plans have not been submitted to date. However, the applicant would perform a number of mitigation activities including stream restoration and enhancement and wetland creation.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the West Virginia Division of Culture and History for review.

ENDANGERED/THREATENED SPECIES REVIEW: The U.S. Fish and Wildlife Service's latest published version of endangered and threatened species has been reviewed to determine if any endangered or threatened species may occur in the project area. The proposed project would be located in a county where the endangered Indiana bat (*Myotis sodalis*) is known to occur. However it appears proposed timber removal activities would affect less than 17 acres of potential Indiana bat foraging and roosting habitat. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.


The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act.

Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the District Engineer may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

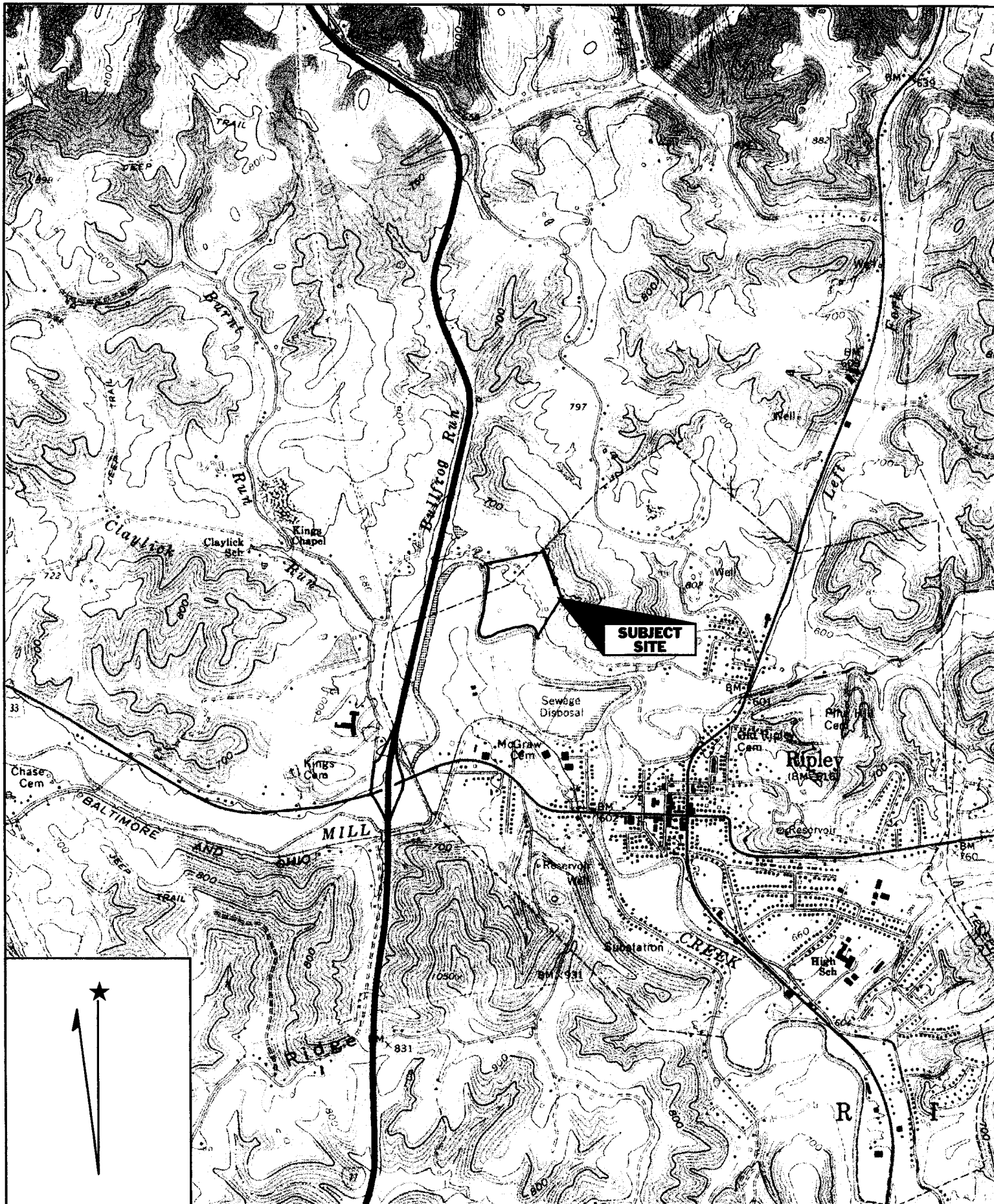
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. Jennifer Walker, Project Manager, South Regulatory Section, CELRH OR-FS; U. S. Army Corps of Engineers

Huntington District; 502 Eighth Street; Huntington, West Virginia 25701-2070. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Ms. Jennifer Walker of the South Regulatory Section at 304-399-6956.



Ginger Mullins, Chief
Regulatory Branch

(W)

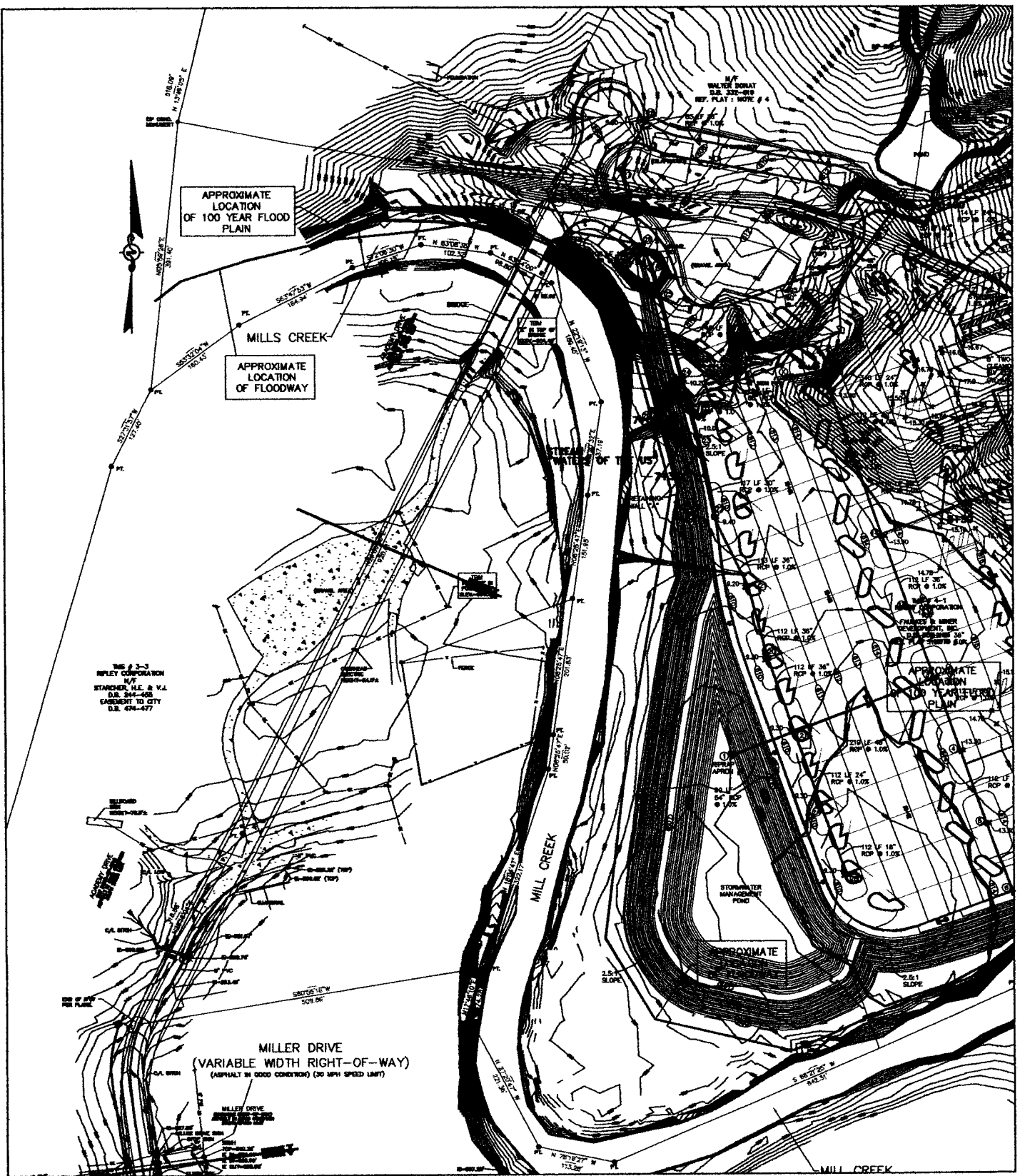


Name: RIPLEY
 Date: 6/28/2005
 Scale: 1 inch equals 2000 feet

Location: 038° 49' 40.5" N 081° 43' 17.0" W
 Caption: Proposed New Ripley Wal-Mart
 Store #1450
 Potesta Project #05-0176
 Figure 1 of 4

Figure 1 of 4

XREF Files: base IMAGE Files:
 File: S:\sask8\proj\05-0176-RIPLEY\dwg\05-0176-4.dwg
 Plot Date/Time: Jun 28, 2005 - 2:33pm
 Plotted By: psbrown



POTESTA

Potesta & Associates, Inc. ENGINEERS AND ENVIRONMENTAL CONSULTANTS

2300 MacCorkle Ave. SE, Charleston, WV 25304

TEL: (304) 342-1400 FAX: (304) 343-9031

E-Mail Address: potesta@potesta.com

Project

PROPOSED GRADING PLAN
 WAL-MART SUPERCENTER
 RIPLEY, WV STORE #1450
 USACE #200500467

Scale 1"=200'

Date JUNE 2005

Dwg. No.

FIGURE 2 of 4

XLIF Files: base IMAGE Files:
File: S:\sdsk8\proj\05-0176-RIPLEY\DWG\05-0176-5.dwg
Plot Date/Time: Jun 28, 2005 - 2:36pm
Plotted By: psbrown



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Project

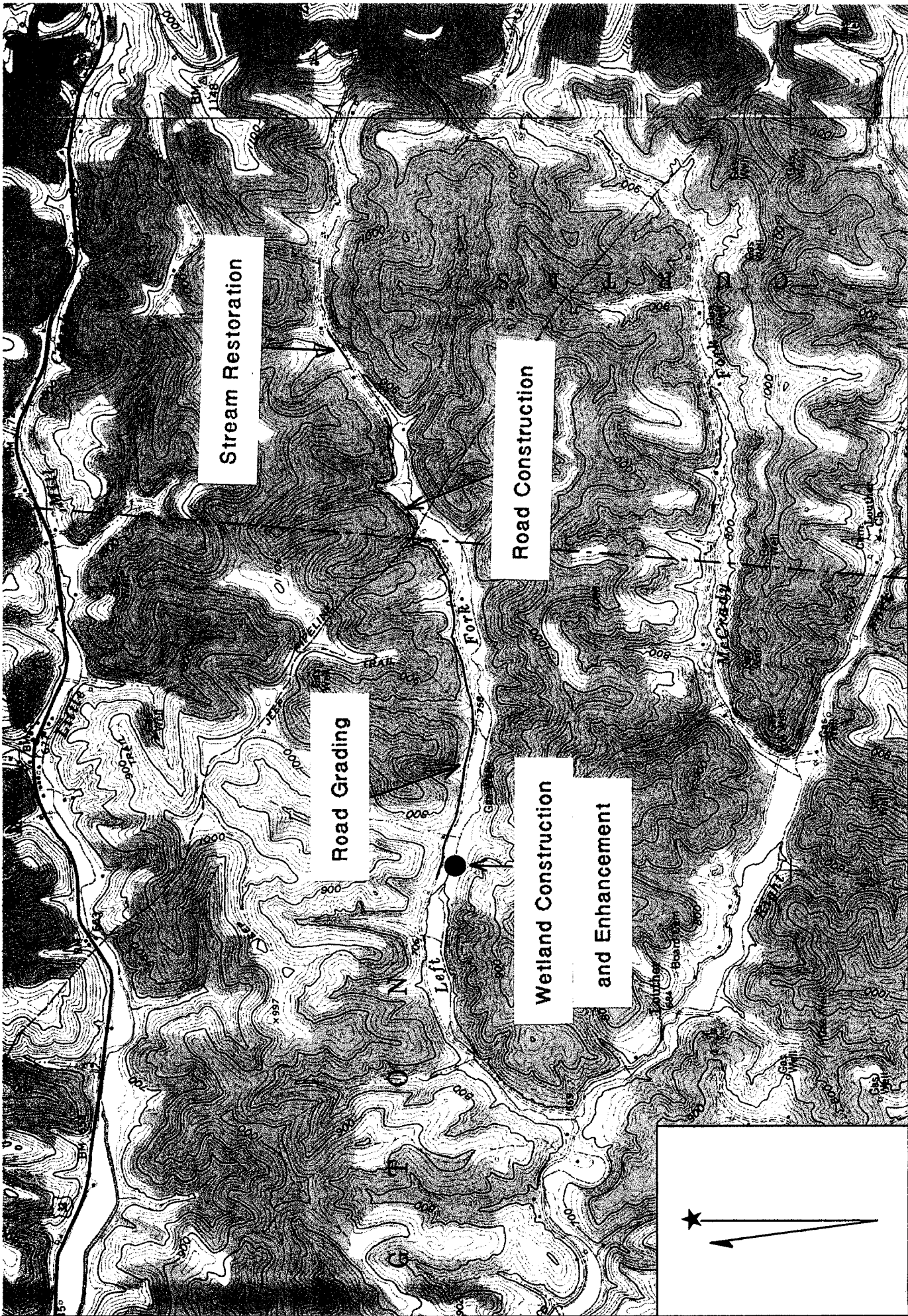
PROPOSED GRADING PLAN
WAL-MART SUPERCENTER
RIPLEY, WV STORE #1450
USACE #200500467

Scale 1"=200'

Date JUNE 2005

Dwg. No.

FIGURE 3 of 4



Location: 038° 48' 23.0" N 081° 31' 45.6" W
Caption: Ripley Wal-Mart Mitigation
Frozencamp WMA
Potesta Project # 05-0176

Name: GAY
Date: 6/15/2005
Scale: 1 inch equals 2000 feet